IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000810
First-tier Tribunal Nos:
PA/54468/2021
IA/13555/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 August 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

PB
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant did not appear and was not represented
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 8 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this order because the appellant is an asylum seeker and so entitled to privacy.

DECISION AND REASONS

1. The appellant did not appear before me. It was convenient to hear the appeal at about 11 o'clock by which time no explanation had been presented to me for

his absence. The record showed that the appellant had been given proper notice in accordance with the Rules and I resolved to continue with the hearing.

2. After leaving the hearing room I received an email that was sent to the Tribunal at about 5.34 yesterday, Monday 7 August. It referred to the hearing on 8 August but for some reason gave only the First-tier Tribunal reference number. The material part of the letter states:

> "We are writing to inform the Tribunal that the Appellant is unable to afford the representation for tomorrow's hearing despite it has been agreed, and as a result, no Counsel can be instructed to attend. We kindly request the Tribunal to postpone this matter."

3. The writer then apologised for any inconvenience and thanked the Tribunal for "understanding".

4. I have considerable sympathy for solicitors in these circumstances. They cannot act if they are not in funds and I can understand their reluctance to come off the record until the last possible minute. I accept their explanation for not attending. The request for an adjournment, had it come to my attention, would have been refused. The appellant could have attended without representation. His address for service is in SE8. It appears to be just a little over five miles from Field House. I am aware that there are vulnerability issues raised in the evidence but the solicitors did not suggest that the appellant was not competent to give instructions or to attend the hearing himself. There is nothing before me to suggest that the appellant had been in any way let down by his solicitors. There is nothing before me to suggest that he could not have attended. There is nothing that would have justified the cost of adjourning and thereby wasting time on the day that the case was listed and requiring time on a future occasion because this case has not been processed. Sometimes adjournments are necessary and when they are they should be granted but there was nothing before me when I made the decision to carry on or since that persuades me that it was right or would have been right to adjourn.

5. Mr Terrell addressed me but before I consider his submission I look at the reasons for the appeal coming before me. Permission was granted by Upper Tribunal Judge Blundell. The reasons are short and I set them out below. He said:

> "It is arguable for the reasons given in the grounds that the basis upon which the judge rejected the medical evidence was unlawful. It is certainly arguable that the judge's approach at [63] was unlawful if, as appears to be the case, he required the diagnosis of PTSD to be 'underpinned' by 'specific observations' by the doctor in question. Whether any such error was material to the outcome of this appeal is doubtful but that is a matter for argument."

6. I consider below the First-tier Tribunal Judge's Decision and Reasons**.**

7. The judge explained that he was dealing with an appeal on asylum grounds. In outline, it was the appellant's case that he had been suspected (he insists, wrongly,) of supporting a banned terrorist group plotting to bomb targets in India including near to where the appellant lived. It was said that the appellant had given two terrorists a "guided tour". The judge noted there was an additional alternative claim arguing it would be in breach of the appellant's human rights to remove him from the United Kingdom to India because of his mental health.

8. The judge then gave himself appropriate standard directions and considered the evidence.

9. This shows that the appellant is a national of India who was born in 1978. In November 2018 he applied to the British High Commission in New Delhi for a multivisit visa to enter the United Kingdom as a member of a film crew. The application was successful and he was permitted to enter the United Kingdom as a member of a film crew for the period 19 November 2018 to 19 May 2019.

10. The appellant entered the United Kingdom in February 2019 but overstayed. On 23 April 2020 he went to the Croydon Asylum Intake Unit to pursue an asylum claim. He said that he was born in Kerala in India and his main language was Malayalam which the judge understood to be a South Indian language that was spoken in Kerala. The appellant claimed not to have his passport or other evidence to confirm his identity. He said his passport was taken from him by the person who brought him to the United Kingdom.

11. He said that he was a Roman Catholic and had worked in India as an aluminium construction worker. He did not explain, and I do not understand, the nature of that job. His wife and their two daughters remained in India.

12. When asked about his medical condition he said that he did not have any conditions but then said he was taking medicine for depression in India but was not registered with a doctor in the United Kingdom. He had Sertraline supplied in India and had not asked for any more in the United Kingdom. I understand Sertraline to be a commonly prescribed antidepressant drug.

13. The appellant outlined the basis of his claim. He had been accused of having connections with a terrorist from Pakistan and he was imprisoned in Mumbai for eight months. He had friends who had called him on his mobile phone and they were said to be members of a terrorist group called Al-Mujahedeen. He had met them in the course of his work. He was charged with terrorism but cleared in court. Nevertheless he was in prison from 24 March 2018.

14. He attended an asylum interview in February 2021 by video conferencing. He altered his account of being arrested because of his friends. He said that the police found his details through his friends, the friends gave the details to the police. He talked about his journey to the United Kingdom. He said he travelled in an officially issued passport in his own identity. He said his friends were arrested in India for having explosives and his wife had to pay bribes because the appellant was implicated. He named the friends and said they had been colleagues of the appellant when he had worked in Dubai. They were electrical workers. In 2015 in India he had given them a tour of Kerala, that being his home area. In 2018 they were caught by the police in Mumbai in possession of explosives. They were searched and they were found to have in their possession photographs taken during the tour of Kerala. He said that he had dealings with the people “once in a while” after showing them around Kerala in 2015.

15. The appellant said he had been in police custody for eight months because he was alleged to be a member of a terrorist group.

16. He was released after eight months on the payment of a bribe. He said the process was organised by his lawyer who had been encouraged by a politician. He was asked why he had said in his screening interview his lawyer had proved he was not involved and he said he was frightened to tell the truth. He said he returned home to his family after he had been released but then went to somewhere in Mumbai on the advice of his lawyer and his lawyer took steps to get him out of the country.

17. It was his case that he had been assured by his lawyer the police no longer had any interest in him. They had been paid off.

18. He was asked to explain in that event why he feared he would be arrested again. He said that his release was conditional on his leaving the country. There was political pressure to detain him and he would be in trouble if he went back. However, he also said the police had not been looking for him since he had left but members of the BJP said they wanted to know his whereabouts.

19. The appellant then said that his former representatives (not those representing him before the First-tier Tribunal) had identified errors in the interview record and process where they said the appellant had been misunderstood. He said that he felt the interview was wrongly conducted because the interpreter had not done the job properly and questions were not explained or answers not recorded. He insisted that he would be arrested by the Indian authorities on arrival, they might kill him and was also a target for the RSS.

20. He then gave detailed comments on answers he had given. He said how at one point the answer was just wrong and did not reflect what he had said at all.

21. The judge then looked at the Reasons for Refusal Letter. In summary the respondent did not believe the appellant. In particular, it was not accepted that he was wanted by the police. This conclusion was reached because of inconsistencies in the account, both the interview and screening interview and also in relation to things said in his visa application. The Secretary of State also noted there was no supporting evidence from his lawyer in India. The claim to be of interest to the RSS was unsupported and it was his own case he had left India freely in his own identity. The Secretary of State was satisfied that people leaving India in that way through passport control are subject to data checks. His claim to have bribed an Immigration Officer was regarded as implausible if, as he claimed, he was pursued in connection with terrorist related matters. The appellant admitted to having some links with a banned organisation, albeit innocently. The respondent took the view that this would have warranted investigation by the police but that the Indian authorities could be expected to treat him fairly and provide redress if he was not treated fairly.

22. It was not thought that his ill health expressed in terms of tension, stress, sleeplessness, nightmares and anxiety even accompanied by depression and suicidal ideation entitled him to remain in the United Kingdom on human rights grounds.

23. Of particular importance is paragraphs 29 through to 34 where the judge considered the psychiatric reports.

24. The first was dated 9 February 2022 and was the report of a Dr Dhumad who said he had interviewed the appellant by video conference for two hours in December 2021. The interview was conducted in the English language. Dr Dhumad then indicated what he had been told by the appellant about his detention and ill-treatment including having his arm deliberately cut and being beaten daily and deprived of food and water and having his head submerged in water. The appellant told Dr Dhumad that the torture was gradually reduced after medical intervention. The appellant felt safe in the United Kingdom but did not feel safe in India. The risk of suicide was assessed as “moderate” but the appellant believed he would be tortured and killed if he was returned to India.

25. Dr Dhumad found no evidence of thought disorder and found the appellant’s description of ill-treatment to be genuine. The appellant’s presentation was consistent with a diagnosis of a moderate depressive episode and PTSD symptoms.

26. There was an addendum report dated 27 September 2022 from Dr Dhumad. That followed an examination by video link on 23 September 2022. On that occasion a Malayalam interpreter was used. Again there indications of low mood, worry and anxiety, a report of suicidal thoughts, and a history of making contact with a general medical practitioner in the United Kingdom but the appellant was worried that he would be locked in a mental institution. A friend was helping with shopping and accommodation and he visited the temple for prayers and spoke to the local priest.

27. Dr Dhumad found the appellant unwell and anxious and hopeless. He had not obtained proper treatment in part because he had not told the general medical practitioner about his difficulties. Dr Dhumad suggested that a possible explanation for that was not wanting to have to relive the experiences by discussing them with the professionals and Dr Dhumad regarded this as "common". Dr Dhumad thought the appellant capable of attending the court and giving evidence but would need extra time and breaks. The judge noted that Dr Dhumad had been asked to comment on whether the appellant's mental health condition could impact on his memory and Dr Dhumad found a phenomenon known as "over general memory" or OGM which impaired the ability to recount specific or biographical memories.

28. The judge then summarised the events of the appeal hearing, noting that the appellant gave evidence with the benefit of a Malayalam interpreter and with breaks as recommended by Dr Dhumad. The statement attempted to sort out some of the inconsistencies that had emerged in the account earlier.

29. The appellant was cross-examined and confirmed there was no case outstanding against him. However he insisted there were arrest warrants out for him. That is something his wife had told him.

30. The judge then noted the submissions of the parties and made his findings. Paragraph 53 is particularly important and I set it out below:

> "The appellant's case can be summarised very succinctly. His case is that he is suffering from PTSD as a result of the torture which he received while in detention on suspicion of aiding and abetting a Pakistani-based Muslim terrorist group called Al-Mujahedeen. None of the discrepancies and inconsistencies in the various accounts which he has given should be held against him in the assessment of credibility, as they are all explicable as being the product of PTSD. Conversely, the diagnosis of PTSD made by Dr Dhumad should be treated as being sufficient to establish the core claim to the lower standard of proof".

31. The judge then went on to note that although there were two psychiatric reports there had been no disclosure of GP medical records or even sight of the prescriptions for antidepressant medicine which the appellant said his wife had obtained from a doctor in Kerala. Nevertheless the judge said unequivocally that he was persuaded that the appellant suffered from a depressive order as diagnosed by Dr Dhumad and was a vulnerable witness.

32. The judge then directed himself very carefully that it was necessary to consider "whether and to what extent" discrepancies in the evidence are the product of vulnerability.

33. The judge then found that the appellant's "vulnerability consequential upon his depressive disorder is likely to have impacted on his ability to give his best evidence in cross-examination" and then noted how the appellant had said that there was no case outstanding against him and that there were multiple warrants

for his arrest and that he knew about this, he said his wife had told him not to come back. It is quite plain that the judge did not regard these things as destructive of the appellant's case. However at paragraph 57 the judge went on to note that he had to make a holistic assessment of the core claim and the judge said "I find it difficult to accommodate its multiple inconsistencies within the OGM paradigm identified by Dr Dhumad". The judge went on to explain that although the appellant's oral evidence could be characterised as "illustrative of a patchy memory" he explained he meant an ability to recall specific events and detail at one time but not on another occasion the judge said that was not the problem identified by Dr Dhumad. Nor was it the explanation given by the appellant through his earlier representatives for the factual inaccuracies in the asylum record. Dr Dhumad did not say that it was an aspect of the syndrome that a person generated false specific memories. He then looked again at the changing evidence about the involvement of a lawyer which I have indicated above and concluded that it was "not credible that the appellant's discounting of the involvement of a lawyer in his oral evidence is attributable to him temporarily being unable to retrieve a specific memory of the involvement of a lawyer".

34. The judge also found there was a fundamental discrepancy in the evidence where the appellant had said that there was ongoing adverse interest in him from the RAW or the IB and the claim, on other occasions, that there was no ongoing interest from the RAW or the IB following his release from detention. The judge noted that the medical condition did not explain how something so fundamental could be forgotten and told differently. One version of events that the adverse interest of the IB and the RAW was repeated on a number of occasions over a lengthy period and was not a one-off thing that might have been forgotten.

35. The judge also found that the medical condition was not a satisfactory explanation for inconsistencies in the details about the appellant's visit to Sri Lanka. It made no sense when the appellant claimed that an agent had mistakenly stated on the Visa Application Form that the appellant travelled to Sri Lanka on 30 April 2018 rather than 20 March 2018. The details would have been in the passport to be copied from entry stamps. It was not an agent's mistake.

36. The judge dealt directly with the submission that the appellant was broadly truthful and had not embellished his claim. Rather, the judge found there was a:

> "… pattern of embellishment "whereby details and dates have been changed in a way that bolster the claim after the appellant has had the opportunity to reflect on the implications of what he has previously stated". Thus, for example, the date when the appellant finished his work in Dubai has been changed from mid-2016 to January 2018, without any plausible explanation being offered as to why the appellant was initially satisfied that the first date was correct. Another example is the appellant introducing the RSS into his account after the substantive interview. No objective evidence has been brought forward to show that the RSS is perceived in India as being synonymous with the BJP, and from the appellant's description, this seems very unlikely."

37. The judge then noted that parts of the story were told consistently, particularly that the appellant had attracted suspicion by recent association with two colleagues from Dubai.

38. Nevertheless the judge said he only gave limited weight to Dr Dhumad's diagnosis of PTSD for two reasons. First was the diagnosis is almost entirely based on what the appellant had said and, second, that the interview was conducted in the English language. It is noted that Dr Dhumad recorded that the

appellant appeared genuinely distressed when he talked about his detention and torture. The judge regarded this as the only observation made by the medical practitioner rather than Dr Dhumad simply being told things by the appellant. The judge could not understand how Dr Dhumad could have reached that conclusion when the appellant was being interviewed in English which was not a language in which he had a high degree of competence. For example, it is hard to see how the appellant could have explained how he got this arm cut. It seemed his vocabulary was not up to it. The judge accepted there was an addendum to the report but that did not go over everything and therefore did not undo the concerns the judge had raised. The judge then noted the absence of any supporting documents from the lawyer, the claim paperwork was not required was contrary to the background evidence drawn to the judge's attention. At paragraph 70 and 71 the judge explains with some care why the appellant's claim was internally contradictory. I set out the paragraphs below because they speak for themselves and are well drawn and do not lend themselves to easy summary. The judge said:

> "70. The claim is internally contradictory for two reasons. Firstly, at various points the appellant has given details about his case that, if true, could only have come from the police or court documents disclosed to him and his lawyer. These details include the number of days which elapsed between the arrest of his friends and his arrest (albeit that he disclaimed any knowledge of this detail in his oral evidence) and his claim that the authorities first became suspicious of his two friends as they were overheard speaking in Urdu, which pointed to them being from Pakistan. While the appellant denied having said anything to this effect in his oral evidence, the appellant did not resile from the claim in his corrections to the interview record, but explained that the suspicion arose from them speaking a particular dialect of Urdu. It is not credible that the appellant would not have told this detail in the course of his interrogation, not least because when precisely his two friends had been arrested and how the authorities first became suspicious of his two friends were completely irrelevant to the question of whether he knew anything about the explosives allegedly found in the flat in Bombay that they were occupying, and whether he knew that they were terrorists when he had taken them on a guided tour of Kerala.
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> 71. Secondly, on one version of events at least, his arrest and detention on suspicion of complicity with the terrorist operation planned by his two friends, including the bombing of sites in Kerala to which he had taken them, generated publicity. Not only did it come to the knowledge of various politicians, but it also came to the knowledge of the local BJP/RSS people in Kerala. It is not credible that this this would all have come about solely through communication by word of mouth. In addition, there would be no reason for the authorities to suppress publicity in the media in relation to the arrest, and (if credence is given to the core claim) charge and conviction of his two friends, who – according to the appellant – had been identified as members of a proscribed terrorist group and had been caught red-handed in the possession of explosives. But not only has the appellant produced no evidence of media publicity in relation to himself, but he has also not produced any evidence of the media publicity that would have been generated by the conviction of his two friends for terrorism offences, even if their trial was conducted in secret."

39. The judge noted the background material that under Indian law a person has a right to a fair and public trial. Sometimes the right to a *public* trial is waived but not the right to a fair one.

40. The judge did not accept that the appellant's lawyer was not allowed access to a charge sheet or arrest warrant because such access would be necessary is a system that allowed a fair trial.

41. The judge drew adverse inferences from the lack of confirmatory documents or details r transcripts of WhatsApp exchanges with the appellant's wife. The judge made no sense of the evidence that the appellant's wife was scared that any documents she sent to the United Kingdom would be intercepted by the Indian authorities. The judge did not understand why that should be or why it should be a source of concern if it were true.

42. The point is that the judge was aware of inconsistencies in the evidence and was aware that the appellant had mental health problems that might have provided an explanation. Although he was doubtful about the diagnosis he took the possibility very seriously and considered the evidence and found that the condition could not be a satisfactory explanation for the inconsistencies as a whole. The judge found there was too much wrong with the case for that to be an acceptable explanation.

43. It does have to be remembered sometimes that the fact that a person might have an honest and explainable difficulty in recalling events does not improve the qualify of his evidence. It might provide good reasons for not holding difficulties against him but it does not make the evidence more persuasive. Here the judge looked in the round and was particularly careful to look at sources of evidence that might have been expected to come from others than the appellant and found them lacking.

44. The judge then dealt with Article 3 and Article 8 matters and nothing of sufficient severity to found a right to remain in the United Kingdom.

45. I consider now expressly the grounds of appeal.

46. They contend, inter alia, that the judge was wrong to say that the only specific observation made by Dr Dhumad was the appearance of genuine distress when talking about detention and torture. Dr Dhumad had also referred to the appellant's mood seeming moderately depressed and anxious as well as expressing feelings of hopelessness. This was confirmed in the addendum report. It was right that much of what Dr Dhumad had concluded was based on what he had been told. Dr Dhumad had also made it plain that his diagnosis was in accordance with standard procedure. In other words, it should not be devalued for that reason. Dr Dhumad expressly said that he considered whether the appellant was feigning or exaggerating his symptoms. He had not taken the story at face value.

47. I have considered the points made in the grounds of appeal drawn by Counsel. I mean them no disrespect by not commenting on each of them. It is however important to bear in mind that the judge did not write off the psychiatric evidence but gave it limited weight for the reasons given. It is very important to appreciate that the judge conspicuously looked at the evidence in the round and the adverse conclusions were drawn on things that go beyond the scope of the psychiatric evidence. The presence of post-traumatic stress disorder would be very indicative of the appellant having been subjected to significant trauma, it does not follow from that that it is the trauma that he complained of to the Tribunal or that the appellant would be at any kind of risk now.

48. I find that the grounds are not made out. What the judge did is what the judge was supposed to do which was to take a view of the evidence as a whole. The judge tested the medical diagnosis as if it were true and considered how that would impact on the evidence and found that it would not have explained away many of the difficulties.

49. In short, this is a decision that was open to the judge for the reasons given. For the avoidance of doubt this is not a case where the appellant's mental health is so severe that he has a human right to remain in the United Kingdom and there is nothing to suggest he has a substantive Article 8 claim unless it is accepted that it would be dangerous for him to return to India which it is not.

Notice of Decision

50. In all the circumstances I dismiss the appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 August 2023